

STATE OF MICHIGAN  
COURT OF APPEALS

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CABINETS BY GRABER, INC., f/k/a TIPPMAN-  
GRABER CABINET COMPANY, L.L.C., d/b/a  
CABINETS BY GRABER,

UNPUBLISHED  
March 23, 2006

Plaintiff-Appellant,

v

VINCENT A. HEBEL and LEIGH ANN HEBEL,

No. 257506  
Oakland Circuit Court  
LC No. 04-058280-CK

Defendants-Appellees.

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Before: Schuette, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

Plaintiff, an Indiana corporation with its principal place of business in Indiana, supplied and installed cabinets and other fixtures in defendants' home. Plaintiff brought this action to recover for the cost of its materials and services pursuant to its contract with defendants. Because plaintiff was not licensed as a residential builder in Michigan at the time it supplied and installed the cabinets and fixtures, the trial court concluded that plaintiff was barred from maintaining this action under MCL 339.2412(1) of the residential builder's act and, accordingly, granted defendants' motion for summary disposition. The court rejected plaintiff's argument that it had two separate contracts with defendants, one for custom cabinets and fixtures or materials at a fixed price and one for the installation of the cabinets at an hourly wage, such that its contract was exempt from the licensure requirement under MCL 339.2401 as a contract for the payment of wages.

This Court reviews a trial court's decision on a motion for summary disposition *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the plaintiff's complaint by the pleadings alone. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). All well-pleaded factual allegations are taken as true, as well as any reasonable inferences or conclusions that can be drawn from the allegations. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996). The motion should be granted only if the claims are so clearly unenforceable as a matter of law that no factual development could justify recovery. *Patterson, supra*.

MCL 339.2412(1) provides:

A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract.

This statute prevents an unlicensed contractor from suing to collect a money judgment. *Republic Bank v Modular One, LLC*, 232 Mich App 444, 449; 591 NW2d 335 (1998), overruled on other grounds in *Stokes v Millen Roofing Co*, 466 Mich 660, 672; 649 NW2d 371 (2002). "The residential builders act specifically bars an unlicensed builder from maintaining an action for compensation on a residential construction contract." *Annex Constr, Inc v Fenech*, 191 Mich App 219, 220; 477 NW2d 103 (1991).

There is no dispute that plaintiff is not a licensed builder in this state. Relying on *Stokes, supra*, the trial court concluded that plaintiff was barred from maintaining this action. We agree with the trial court that plaintiff cannot distinguish this case from *Stokes*. In *Stokes*, the Supreme Court held that the defendant could not maintain its counterclaim for breach of contract because it was unlicensed and the residential builders act required licensing in order to maintain an action to recover for the work performed. *Stokes, supra* at 664-665. The Court also rejected the defendant's argument that it should at least be able to recover the cost of the materials supplied, stating:

Finally, Millen argues that, even if it is barred from seeking compensation, it should be allowed to recover the value of the materials it supplied. A "supplier" does not require a license under the act.

The fact that Millen was not required to be licensed to supply slate is of no consequence here. In order for the "supplier" portion of this contract to be enforced, it would have to be severed from the illegal portions of the agreement. As the dissent points out, for that to occur, the illegal provision must not be central to the parties' agreement. See 2 Restatement Contracts, § 603, pp 1119-1120.

"[I]f the agreements are interdependent and the parties would not have entered into one in the absence of the other, the contract will be regarded . . . as entire and not divisible. " [3 Williston, Contracts (3d ed), § 532, p 765.]

Hence, the contract can be bifurcated only if the agreement to install the materials is independent of the agreement to supply them. But, here the agreements were not independent of one another. Applying the test formulated by the dissent, it becomes apparent that the illegal section, which provided for the installation of a slate roof, was central to the parties' agreement. The parties' contract required Millen to "furnish and install" the roofing components and did not specify the portion of the total cost attributable solely to materials. If the parties had not intended Millen to install the roof, the Stokes would have had the

installer they selected deliver the slate. It follows that the contract is entire and indivisible.

Even if, normally, the contract could be bifurcated, the statute prohibits it. Section 2412 bars a suit for compensation if a license was necessary for performance of "an act or contract." The statute requires us to look for either an act or a contract requiring a license. It does not make provision for bifurcating building contracts into separate labor and supply components. Accordingly, it is irrelevant that Millen could have supplied slate without a license. Millen's counterclaim was properly disallowed. [*Stokes, supra* at 666-667 (footnote omitted).]

Although plaintiff's contract with defendants separately itemized the costs for materials and labor, the Court in *Stokes, supra* at 666-667, explained that MCL 339.2412 prohibits bifurcation of a contract into separate labor and supply components to avoid the licensing requirement. Therefore, the trial court properly found that this is not a valid basis for distinguishing this case from *Stokes*.

We also reject plaintiff's argument that it is exempt from the licensing requirement because its agreement with defendants is for the payment of wages. MCL 339.2412(1) requires that a "residential maintenance and alteration contractor" be licensed during the performance of its work in order to bring an action to recover for the performance of the work. MCL 339.2401(b) defines "residential maintenance and alteration contractor" as

a person who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another for the repair, alteration, or an addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination residential and commercial structure, or building of a garage, or laying of concrete on residential property, or who engages in the purchase, substantial rehabilitation or improvement, and resale of a residential structure, engaging in that activity on the same structure more than twice in 1 calendar year, except in the following instances:

- (i) If the work is for the person's own use and occupancy.
- (ii) If the rehabilitation or improvement work of residential type property or a structure is contracted for, with, or hired entirely to be done and performed for the owner by a person licensed under this article.
- (iii) If work is performed by a person employed by the owner to perform work for which the person is licensed by the state.

Plaintiff argues that it was exempt from the licensing requirement under MCL 339.2401(b) because its agreement with defendants provided only for the payment of wages for installing the cabinets and other items.

MCL 339.2401(e) defines "wages" as

money paid or to be paid on an hourly or daily basis by an owner, lessor, or occupant of a residential structure or combination residential and commercial structure as consideration for the performance of personal labor on the structure by a person who does not perform or promise to perform the labor for any other fixed sum, price, fee, percentage, valuable consideration, or other compensation *and who does not furnish or agree to furnish the material or supplies required to be used in the performance of the labor* or an act defined in subdivision (a) or (b). [Emphasis added.]

Plaintiff's reliance on *Wojas v Rosati*, 182 Mich App 477; 452 NW2d 864 (1990), is misplaced. The principal issue in that case was whether the trial court should have awarded attorney fees for a vexatious appeal by the defendant. In the context of deciding that issue, however, this Court had to determine if there was any merit to the appeal.

In this case, damages are warranted, because there was no meritorious issue on appeal. The uncontroverted testimony indicates that plaintiff worked only for wages and sought only reimbursement for materials furnished. MCL 339.2401(e) . . . . He was not a residential maintenance and alteration contractor. Therefore, he required no license under the act. MCL 339.2412 . . . . The court did not abuse its discretion in awarding damages. [*Wojas, supra* at 480-481.]

The plaintiff in *Wojas* was seeking payment for performing carpentry work in the defendant's home. The Court noted in its decision that the plaintiff also sought reimbursement for materials he furnished. *Id.* at 480. According to plaintiff, because the plaintiff in *Wojas* supplied materials, this Court should conclude that defendants here agreed to pay plaintiff wages, per MCL 339.2401(e). But the decision in *Wojas* contains little discussion of the underlying facts and, therefore, is of little guidance to this Court in resolving this case. Furthermore, it appears that the plaintiff in *Wojas* was primarily hired to perform labor, not provide materials. In contrast, this case involves a single agreement to both furnish custom cabinets and other fixtures, and to install those cabinets and fixtures. As previously indicated, the contract cannot be bifurcated into separate labor and supply contracts.

Although defendants agreed to pay plaintiff for labor at a rate of \$35 an hour, MCL 339.2401(e) provides that the term "wages" only applies when money is paid for labor to one "who does not furnish or agree to furnish the material or supplies required to be used in the performance of the labor . . . ." Here, the parties' contract discloses that plaintiff agreed to supply custom-made cabinetry and other fixtures for defendants. The labor to install the cabinets and fixtures was part of the agreement. Even though the parties separated the costs of the labor and materials, nothing in MCL 339.2401(e) suggests that one may avoid the licensing requirement by separately itemizing labor and materials. Accordingly, the trial court properly found that plaintiff was not exempt from the licensing requirement on the basis that its agreement with defendants involved the payment of wages.

Although plaintiff argues that not allowing it to recover for its materials and labor is a harsh result that will unjustly enrich defendants, the Court recognized as much in *Stokes, supra* at 667 n 4, but concluded that such a result is mandated by the residential builders act. The Court further held that equity could not be used to allow an unlicensed contractor to obtain relief because to do so would usurp the Legislature's role by concluding that a statutory penalty was

excessively punitive. *Id.* at 671-672. A court that allows an unlicensed contractor to recover for its services would be defying the residential builders act. *Id.* at 672-673. Thus, the fact that the result in this case may be harsh does not aid plaintiff's position.

Affirmed.

/s/ Bill Schuette  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio